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इस भाग में पिछे पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on 9th July, 1998.

BILL NO. XIV OF 1998

A BILL further to amend the Narcotic Drugs and Psychotropic Substances Act, 1985.

Be it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1998.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act, and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

61 of 1985.

2. In the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the principal Act), in section 1, in sub-section (2), after the words "whole of India", the following shall be inserted, namely:—

Amendment of section 1.

"and it applies also—

(a) to all citizens of India outside India;

(b) to all persons on ships and aircrafts registered in India, wherever they may be".

Amendment of section 2.

3. In section 2 of the principal Act,—

(a) for clause (i), the following clause shall be substituted, namely:—

'(i) "addict" means a person who has dependence on any narcotic drug or psychotropic substance;';

(b) clause (viiia) shall be relettered as clause (viid) and before clause (viid) as so relettered, the following clauses shall be inserted, namely:—

(viiia) "commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;

(viib) "controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, controlled substances or substances substituted for them to pass out of, or through or into the territory of India with the knowledge and under the supervision with a view to identifying the persons involved in the commission of an offence under this Act;

(viic) "corresponding law" means any law corresponding to the provisions of this Act;';

(c) after clause (xxiii), the following clause shall be inserted, namely:—

'(xxiiia) "small quantity", in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette.'.

Amendment of section 7A.

4. In section 7A of the principal Act, for sub-sections (2) and (3), the following sub-sections shall be substituted, namely:—

"(2) The Fund shall be applied by the Central Government to meet the expenditure incurred in connection with the measures taken for—

(a) combating illicit traffic in narcotic drugs, psychotropic substances or controlled substances;

(b) controlling the abuse of narcotic drugs and psychotropic substances;

(c) identifying, treating, rehabilitating addicts;

(d) preventing drug abuse;

(e) educating public against drug abuse;

(f) supplying drugs to addicts where such supply is a medical necessity.

(3) The Central Government may constitute a Governing Body as it thinks fit to advise that Government and to sanction money out of the said Fund subject to the limit notified by the Central Government in the Official Gazette.".

Insertion of new section 8A.

namely:—

Prohibition of certain activities relating to property derived from offence.

'8A. No person shall—

(a) convert or transfer any property knowing that such property is derived from an offence committed under this Act or under any other

corresponding law of any other country or from an act of participation in such offence, for the purpose of concealing or disguising the illicit origin of the property or to assist any person in the commission of an offence or to evade the legal consequences; or

(b) conceal or disguise the true nature, source, location, disposition of any property knowing that such property is derived from an offence committed under this Act or under any other corresponding law of any other country; or

(c) knowingly acquire, possess or use any property which was derived from an offence committed under this Act or under any other corresponding law of any other country.'.

6. For sections 15 to 18 of the principal Act, the following sections shall be substituted, namely:—

"15. Whoever, in contravention of any provisions of this Act or any rule or order made or condition of a licence granted thereunder, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

16. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates any coca plant or gathers any portion of a coca plant or produces, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses coca leaves shall be punishable with rigorous imprisonment for a term which may extend to ten years, or with fine, or with both.

17. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses prepared opium shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both; or

Substitution of new sections for sections 15 to 18.

Punishment for contravention in relation to poppy straw.

Punishment for contravention in relation to coca plant and coca leaves.

Punishment for contravention in relation to prepared opium.

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine; or

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

18. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine.”.

Amendment of section 20. 7. In section 20 of the principal Act, in clause (b), for sub-clauses (i) and (ii), the following sub-clauses shall be substituted, namely:—

“(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine; and

(ii) where such contravention relates to sub-clause (b),—

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees.”.

Substitution of new sections for sections 21 to 23.

8. For sections 21 to 23 of the principal Act, the following sections shall be substituted, namely:—

"21. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,—

Punishment for contravention in relation to manufactured drugs and preparations.

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

22. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable,—

Punishment for contravention in relation to psychotropic substances.

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

23. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence or permit granted or certificate or authorisation issued thereunder, imports into India or exports from India or transships any narcotic drug or psychotropic substance shall be punishable,—

Punishment for illegal import into India, export from India or transhipment of narcotic drugs and psychotropic substances.

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which

may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.”

Substitution of new section for section 25.

9. For section 25 of the principal Act, the following section shall be substituted, namely:—

“25. Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.”.

Substitution of new section for section 27.

10. For section 27 of the principal Act, the following section shall be substituted, namely:—

“27. Whoever consumes any narcotic drug or psychotropic substance shall be punishable,—

(a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine, or with both; and

(b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine, or with both.”.

Amendment of section 30.

11. In section 30 of the principal Act, for the words, figures and brackets “section 15 to section 25 (both inclusive) and from the circumstances of the case”, the words, figures and letter “sections 19, 24 and 27A and for offences involving commercial quantity of any narcotic drug or psychotropic substance and from the circumstances of the case” shall be substituted.

Substitution of new section for section 31.

12. For section 31 of the principal Act, the following section shall be substituted, namely:—

“31. (1) If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under this Act is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to one-half of the maximum term of imprisonment and also be liable to fine which shall extend to one-half of the maximum amount of fine.

(2) Where the person referred to in sub-section (1) is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine, the minimum punishment for such person shall be one-half of the minimum term of imprisonment and one-half of the minimum amount of fine:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding the fine for which a person is liable.

(3) Where any person is convicted by a competent court of criminal jurisdiction outside India under any corresponding law, such person, in respect of such conviction, shall be dealt with for the purposes of sub-sections (1) and (2) as if he had been convicted by a court in India.”.

13. In section 31A of the principal Act,—Amendment of
section 31A.**(a) in sub-section (1),—**

(i) for the words, figures, brackets and letter "section 15 to section 25 (both inclusive) or section 27A", the words, figures and letter "section 19, section 24, section 27A and for offences involving commercial quantity of any narcotic drug or psychotropic substance" shall be substituted;

(ii) in sub-clause (a), in the Table, in column (2), against entry (viii), for the figures and word "1,500 grams", the words "lesser of the quantity between the quantities given against the respective narcotic drugs or psychotropic substances mentioned above forming part of the mixture" shall be substituted;

(b) in sub-section (2), for the words, figures, brackets and letter "section 15 to section 25 (both inclusive), section 27A, section 28 or section 29", the words, figures and letter "section 19, section 24 or section 27A and for offences involving commercial quantity of any narcotic drug or psychotropic substance" shall be substituted

14. After section 32A of the principal Act, the following section shall be inserted, namely:—Insertion of new
section 32B.

"32B. Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:—

Factors to be
taken into
account for im-
posing higher
than the mini-
mum punish-
ment.

(a) the use or threat of use of violence or arms by the offender;

(b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;

(c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence; and

(d) the fact that the offence is committed in an educational institution or social service facility or in their immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities."

15. For section 36A of the principal Act, the following section shall be substituted, namely:—Substitution of
new section for
section 36A.

'36A. (I) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

Offences triable
by Special
Courts.

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal procedure, 1973, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate;

Provided that in cases which are triable by the Special Court where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him,

that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973, in relation to an accused person in such case who has been forwarded to him under that section;

2 of 1974.

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

2 of 1974

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973, and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36.

2 of 1974.

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

2 of 1974.

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court shall extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences punishable under this Act with imprisonment for a term of less than three years may be tried summarily.

2 of 1974.

16. For section 36D of the principal Act, the following section shall be substituted, namely:—

"36D. (1) Any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988, which is triable by a Special Court shall, until a Special Court is constituted under section 36, notwithstanding anything contained in the Code of Criminal Procedure, 1973, be tried by a Court of Session.

2 of 1989.

(2) Where any proceedings in relation to any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 are pending before a Court of Session, then, notwithstanding anything contained in sub-section (1), such proceeding shall be heard and disposed of by the Court of Session:

2 of 1989.

Substitution of
new section for
section 36D.

Transitional pro-
visions.

2 of 1974

Provided that nothing contained in this sub-section shall affect the power of the High Court under section 407 of the Code of Criminal Procedure, 1973 to transfer any case or class of cases taken cognizance by a Court of Session under sub-section (1).".

17. In section 37 of the principal Act, in sub-section (1), in clause (b), for the words "a term of imprisonment of five years or more under this Act", the words, figures and letter "offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity" shall be substituted.

Amendment of section 37

18. In section 39 of the principal Act, in sub-section (1), after the words and figures "under section 27", the words "or for offences relating to small quantity of any narcotic drug or psychotropic substance" shall be inserted.

Amendment of section 39.

19. For sections 41 to 43 of the principal Act, the following section shall be substituted, namely:—

Substitution of new sections for sections 41 to 43.

'41. (1) A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed.

Power to issue warrant and authorisation.

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the para-military forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under section 42.

42. (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special

Power of entry, search, seizure and arrest without warrant or authorisation.

order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of residence, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within a reasonable time send a copy thereof to his immediate official superior.

43. Any officer of any of the departments mentioned in section 42 may—

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation.—For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.'

Amendment of section 44.

20. In section 44 of the principal Act, after the words "psychotropic substance", the words "or controlled substance" shall be inserted.

Amendment of section 49.

21. In section 49 of the principal Act, after the words "psychotropic substance", the words "or controlled substance" shall be inserted.

Amendment of section 50.

22. In section 50 of the principal Act, after sub-section (4), the following sub-sections shall be inserted, namely:—

"(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973.

Insertion of new section 50A.

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within a reasonable time send a copy thereof to his immediate official superior.".

Power to undertake controlled delivery.

23. After section 50 of the principal Act, the following section shall be inserted, namely:—

"50A. The Director General of Narcotics Control Bureau constituted under sub-section (3) of section 4 or any other officer authorised by him in this behalf, may, notwithstanding anything contained in this Act, undertake controlled delivery of any consignment to—

(a) any destination in India;

(b) a foreign country, in consultation with the competent authority of such foreign country to which such consignment is destined, in such manner as may be prescribed.".

Amendment of section 53.

24. In section 53 of the principal Act,—

(a) in sub-section (1), for the words "or Border Security Force", the words "or any other department of the Central Government including para-military forces or armed forces" shall be substituted;

(b) in sub-section (2), after the word "excise", the words "or any other department" shall be inserted.

Substitution of new section for section 54.

25. For section 54 of the principal Act, the following section shall be substituted, namely:—

"54. In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of—

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured,

Presumption from possession of illicit articles.

for the possession of which he fails to account satisfactorily.".

Amendment of
section 60.

26. In section 60 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.";

(b) in sub-sections (2) and (3), after the words "psychotropic substance", wherever they occur, the words "or controlled substances" shall be inserted.

Amendment of
section 61

27. In section 61 of the principal Act, for the words "narcotic drug or psychotropic substance", the words "narcotic drug, psychotropic substance or controlled substance" shall be substituted.

Amendment of
section 62.

28. In section 62 of the principal Act, for the words "narcotic drug or psychotropic substance", the words "narcotic drug, psychotropic substance or controlled substance" shall be substituted.

Amendment of
section 63

29. In section 63 of the principal Act,—

(a) in sub-section (2), in the second proviso, after the words "psychotropic substance", the words "controlled substance" shall be inserted;

(b) sub-section (3) shall be omitted.

Substitution of
new section for
section 64A

30. For section 64A of the principal Act, the following section shall be substituted, namely:—

Immunity from
prosecution to
addicts
volunteering for
treatment

"64A. Any addict, who is charged with an offence punishable under section 27 or with offences involving small quantity of narcotic drugs or psychotropic substances, who voluntarily seeks to undergo medical treatment for de-addiction from a hospital or an institution maintained or recognised by the Government or a local authority and undergoes such treatment shall not be liable to prosecution under section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substances:

Provided that the said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-addiction.".

Amendment of
section 68A

31. In section 68A of the principal Act, in sub-section (2),—

(i) in clause (a), for the word "five", the word "ten" shall be substituted;

(ii) after clause (c), the following clause shall be inserted, namely:—

"(cc) every person who has been arrested or against whom a warrant or authorisation of arrest has been issued for the commission of an offence punishable under this Act with imprisonment for a term of ten years or more, and every person who has been arrested or against whom a warrant or authorisation of arrest has been issued for the commission of a similar offence under any corresponding law of any other country;"

(iii) in clauses (d), (e) and (f), after the word, brackets and letter "clause (c)", the words, brackets and letters "or clause (cc)" shall be inserted.

Amendment of
section 68B

32. In section 68B of the principal Act, in clause (g), in sub-clause (i), for the words "illicit traffic", the words "the contravention of any provisions of this Act" shall be substituted.

33. In section 68C of the principal Act, in sub-section (2), for the proviso, the following proviso shall be substituted, namely:—

Amendment of section 68C.

"Provided that no property shall be forfeited under this Chapter if such property was acquired, by a person to whom this Act applies, before a period of six years from the date he was arrested or against whom a warrant or authorisation of arrest has been issued for the commission of an offence punishable under this Act or from the date the order or detention was issued, as the case may be.".

34. In section 68E of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment of section 68E.

"(1) Every officer empowered under section 53 and every officer-in-charge of a police station shall, on receipt of information is satisfied that any person to whom this Chapter applies holds any illegally acquired property, he may, after recording reasons for doing so, proceed to take all steps necessary for tracing and identifying such property.".

35. In section 68H of the principal Act, in sub-section (2), the following proviso shall be inserted at the end, namely:—

Amendment of section 68H.

"Provided that no notice for forfeiture shall be served upon any person referred to in clause (cc) of sub-section (2) of section 68A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause.".

36. In section 68-I of the principal Act, after sub-section (3), the following proviso shall be inserted at the end, namely:—

Amendment of section 68-I.

"Provided that no illegally acquired property of any person who is referred to in clause (cc) of sub-section (2) of section 68A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause shall stand forfeited.".

37. In section 68-O of the principal Act, in sub-section (1), for the words "Any person aggrieved by an order of the competent authority", the words, brackets, figures and letter "Any officer referred to in sub-section (1) of section 68E or any person aggrieved by an order of the competent authority" shall be substituted.

Amendment of section 68-O.

38. After section 68Y of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 68Z.

"68Z. (1) Where the detention order of a detenu is set aside or withdrawn, properties seized or frozen under this Chapter shall stand released.

Release of property in certain cases.

(2) Where any person referred to in clause (a) or clause (b) or clause (cc) of sub-section (2) of section 68A has been acquitted or discharged from the charges under this Act or any other corresponding law of any other country and the acquittal was not appealed against or when appealed against, the appeal was disposed of as a consequence of which such property could not be forfeited or warrant of arrest or authorisation of arrest issued against such person has been withdrawn, then, property seized or frozen under this Chapter shall stand released.".

39. In section 76 of the principal Act, in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

Amendment of section 76.

'(ca) the manner in which "controlled delivery" under section 50A is to be undertaken; '.

Amendment of section 77.

40. In section 77 of the principal Act, for the portion beginning with the words "Every rule made under this Act" and ending with "shall be laid, as soon as may be, after it is made or issued", the following shall be substituted, namely:—

"Every rule made under this Act by the Central Government and every notification or order issued under clause (viiia), clause (xi), clause (xxiiia) of section 2, section 3, section 7A, section 9A and clause (a) of section 27 shall be laid, as soon as may be, after it is made or issued".

Application of this Act to pending cases.

41. (1) Notwithstanding anything contained in sub-section (2) of section 1, all cases pending before the courts or under investigation at the commencement of this Act shall be disposed of in accordance with the provisions of the principal Act as amended by this Act and accordingly, any person found guilty of any offence punishable under the principal Act, as it stood immediately before such commencement, shall be liable for a punishment which is lesser than the punishment for which he is otherwise liable at the date of the commission of such offence:

Provided that nothing in this section shall apply to cases pending in appeal.

(2) For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this Act has not come into force.

STATEMENT OF OBJECTS AND REASONS

The Narcotic Drugs and Psychotropic Substances Act, 1985 provides deterrent punishment for various offences relating to illicit trafficking in narcotic drugs and psychotropic substances. Most of the offences invite uniform punishment of a minimum ten years rigorous imprisonment which may extend up to twenty years. While the Act envisages severe punishments for drug traffickers, it envisages reformative approach towards addicts. In view of the general delay in trial it has been found that the addicts prefer not to invoke the provisions of the Act. The strict bail provisions under the Act add to their misery. Therefore, it is proposed to rationalise the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. This requires rationalisation of the sentence structure provided under the Act. It is also proposed to restrict the application of strict bail provisions to those offenders who indulge in serious offences.

2. The Act was amended in 1989, *inter alia*, to provide for tracing, seizing and forfeiture of illegally acquired property. The experience gained over the years reveals that the provisions have certain inadequacies due to which the implementation of the provisions has been tardy. Certain other inadequacies in the various provisions of the Act have been noticed. In order to remove those inadequacies it is necessary to amend the relevant provisions.

3. The provisions relating to certain procedural aspects like search and seizure have certain deficiencies due to which the law enforcement efforts against illicit drug trafficking have not proved very effective. A need has also been felt to confer powers of entry, search, seizure, etc., in respect of offences relating to Controlled Substances and for tracing, freezing, seizing and forfeiture of illegally acquired property upon the empowered officers.

4. Certain obligations, specially in respect of the concept of "Controlled Delivery" arising from the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 to which India acceded, also require to be addressed by incorporating suitable provisions in the Act.

5. This Bill seeks to achieve the above objects.

YASHWANT SINHA.

Notes on clauses

Clause 2.—This clause seeks amendment section 1 of the principal Act to make it applicable to all citizens who are outside the territory of India and to all the persons on ships and aircrafts registered in India, wherever they may be. These are requirements under the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

Clause 3.—This clause seeks to replace the definition of 'addict' and to define the expression 'commercial quantity', 'controlled delivery' and 'small quantity'. The term 'controlled delivery' as defined in the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is an investigative technique by which suspected drug consignments wholly or substituted are permitted to reach their destinations with a view to bring the entire gang of offenders and to punish him.

Clause 4.—This clause seeks to enlarge the purposes for which the National Fund for Control of Drug Abuse shall be applied. It also seeks to confer power on the Governing Body to sanction money out of the Fund.

Clause 5.—This clause seeks to insert a new section 8A to provide that certain activities relating to conversion, etc., of property derived from drug trafficking shall be an offence.

Clause 6.—This clause seeks to substitute sections 15 to 18 of the principal Act to rationalise sentence prescribed in respect of the offences relating to poppy straw, coca plant and coca leaves, prepared opium and in respect of cultivation of opium poppy and production, etc.

Clause 7.—This clause seeks to rationalise the sentence prescribed in respect of offences relating to cannabis.

Clause 8.—This clause seeks to substitute sections 21 to 23 of the principal Act to rationalise sentences prescribed in respect of offences relating to manufactured drugs and preparation containing manufactured drugs, psychotropic substances, illegal import or export of narcotic drugs and psychotropic substances.

Clause 9.—This clause seeks to remove the existing anomaly in respect of the offence of allowing premises, etc., to be used for commission of an offence. The proposed amendment would ensure that the person who allows the premises, etc., for commission of offences is not given the punishment higher than the one prescribed for the person who uses the premises, etc., for commission of offence.

Clause 10.—This clause seeks to substitute section 27 of the principal Act to rationalise the punishment for consumption of any narcotic drug or psychotropic substances.

Clause 11.—This clause seeks to restrict preparation as an offence only in respect of the offences under sections 19 (embezzlement of opium by licensed cultivators), 24 (external dealings), 27A (financing illicit trafficking) and offences relating to commercial quantities of drugs.

Clause 12.—This clause seeks to provide for enhanced punishment to every offender who has been previously convicted of the offence punishable under this Act.

Clause 13.—This clause seeks to abolish mandatory death sentence in respect of certain offences.

Clause 14.—The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, requires that certain factors are to be considered for imposing higher punishment to drug offenders. This clause seeks to provide for the same, by insertion of new section 32B.

Clause 15.—This clause provides for trial of offenders who are charged with offences punishable with sentence up to three years by the Court of a Magistrate and for summary trial of such offenders. This clause also provides for remand of accused charged with serious offences up to one year without filing challan/complaint.

Clause 16.—This clause seeks to provide transitional provisions for trial of the cases and for transfer of cases taken cognizance by the Sessions Court to Special Court by the respective High Courts.

Clause 17.—This clause seeks to liberalise bail provisions in respect of certain offences.

Clause 18.—This clause is proposed to ensure that addicts who are charged with lesser offences get the benefit of release on probation.

Clause 19.—This clause seeks to substitute sections 41 to 43 of the principal Act to extend powers of the Central Government and State Governments to authorise subordinate officers for search, seizure, etc., and to simplify the procedure for seizure, detention and search of persons.

Clause 20.—This clause seeks to widen the scope of the Act as to include controlled substances.

Clause 21.—This clause provides for the power to stop and search conveyance in respect of controlled substances.

Clause 22.—This clause provides for search of a person by the empowered officers without taking him to the nearest Gazetted Officer or Magistrate if there is reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of contraband. The officer shall record such reasons after the search is over and send a copy of it within a reasonable time to his immediate official superior.

Clause 23.—This clause empowers the Director General, Narcotics Control Bureau to authorise the undertaking of 'controlled delivery'.

Clause 24.—This clause provides for empowering officers of other Departments the powers of an officer incharge of a police station by the Central and State Governments.

Clause 25.—This clause extends the presumption of guilt in certain circumstances in respect of controlled substances also.

Clause 26.—This clause seeks to amend section 60 of the principal Act to make liable to illicit articles and conveyance to confiscation in respect of controlled substances also.

Clause 27.—This clause seeks to amend section 61 of the principal Act to make liable for confiscation of goods used for concealing illicit articles in respect of controlled substances also.

Clause 28.—This clause proposes to make liable for confiscation in respect of sale proceeds of controlled substances also.

Clause 29.—This clause seeks to remove the anomaly of appeal lying to the same court by omitting sub-section (3) of section 63 of the principal Act.

Clause 30.—This clause seeks to ensure that the addicts who are charged with small quantity offences involving small quantity and volunteer for treatment get the benefit of immunity from prosecution.

Clause 31.—This clause seeks to apply the provisions of Chapter VA of the Act relating to tracing, freezing and seizure of illegally acquired property to a person who has

been arrested or against whom warrant or authorisation of arrest has been issued for commission of offence punishable under the Act with imprisonment of ten years or more.

Clause 32.—This clause seeks to enlarge the scope of the term 'illegally acquired property'.

Clause 33.—This clause provides that the embargo of prohibition of forfeiture of the illegally acquired property of an offender is reckoned as six years before the date he was arrested or authorisation of arrest was issued against him. This clause also extends such embargo of prohibition to the property acquired by a person before six years from the date of order of detention was issued.

Clause 34.—This clause enables tracing and identifying illegally acquired property of a person as soon as he has been arrested or warrant or authorisation of arrest has been issued against him.

Clauses 35 and 36.—These clauses are intended to ensure that the illegally acquired property seized or frozen is forfeited only after a person has been convicted.

Clause 37.—This clause provides for appeal by departmental officers against the order of the Competent Authority.

Clause 38.—This clause provides for automatic release of the property frozen or seized when the person is acquitted of the charges against him or when a detention order is set aside or withdrawn.

Clause 39.—This clause provides for the Central Government's power to make rules in respect of controlled delivery.

Clause 40.—This clause provides for laying before the Parliament notifications or orders made in respect of controlled substances.

Clause 41.—This clause provides for extending the benefit of liberal provisions of this Bill to those offenders who have committed the offences before the date the provisions of this Bill comes into force and the trial has not yet concluded.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clauses (b) and (c) of clause 3 of the Bill empowers the Central Government to specify in the Official Gazette the commercial quantity and small quantity of the narcotic drugs and psychotropic substances respectively.

2. Clause 4 of the Bill confers powers to the Central Government to notify in the Official Gazette the limit within which the Governing Body to be constituted under this clause may sanction the fund out of National Fund for Control of Drugs Abuse.

3. Clause 23 of the Bill empowers the Central Government to prescribe the manner in which the "controlled delivery" of the narcotic drugs, psychotropic substances and controlled substances shall be undertaken.

4. The matters with respect to which the rules may be made are matters of procedures and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

R.C. TRIPATHI,
Secretary-General.

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